

PAMANTASAN NG LUNGSOD NG MAYNILA, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT, HON. FILEMON FERNANDEZ, JR., HON. ALBINA MANALO-DANS, AS COMMISSIONERS OF CIVIL SERVICE COMM...

G.R. No. 65439 (UDK-7316). July 31, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

On November 13, 1985, this Court promulgated its decision in G. R. No. 65439 entitled "Pamantasan Ng Lungsod Ng Maynila v. The Hon. Intermediate Appellate Court, et al." dismissing the petition for review and affirming the decision of the Intermediate Appellate Court. The dispositive portion of the decision reads:

"WHEREFORE, x x x Resolution No. 81-279 dated March 1, 1981, as well as Resolution No. 81-510 dated April 23, 1981, of the Respondent Civil Service Commission, declar-ing as permanent the appointment of the appellant Dr. Hernani Esteban as vice-president for administration of the university under the Board of Regents' Resolution No. 485 dated June 23, 1973, and ordering his immediate reinstatement to that position with back salaries, allowances and other benefits, is affirmed, provided he has not yet reached the age of compulsory retirement from the government service; otherwise he shall be entitled to back salaries, allowances and other benefits only up to the time he should have been retired from said service."

We modified the above judgment such that the payment of back salaries should not exceed a period of five (5) years.

On February 14, 1986, an "Ex-Parte Motion for Immediate Execution" was filed by Dr. Esteban before the Regional Trial Court of Manila, Branch XIII. A writ of execution was issued by Judge Rafael Declaro in an order dated February 18, 1986.

On March 3, 1986, the writ of execution was returned unsatisfied by Deputy Sheriff Reynaldo G. Javier with the explanation from the City Legal Officer Augusto O. Casibang (representing respondent Pamantasan) that "the records of the Pamantasan Ng Lungsod Ng Maynila show that Dr. Hernani Esteban had reached the compulsory age of 65 since July 20, 1984, having been born on July 20, 1919. His reinstatement under the expressed terms of the decision being subject to the condition that 'he has not yet reached the age of compulsory retirement' it follows that he cannot be legally reinstated without varying the decision itself. Under the circumstances, the writ of execution for reinstatement of Dr. Esteban is not authorized by the decision itself."

An alias writ of execution was sought by Dr. Esteban but the motion seeking it was denied by Judge Declaro in an order dated March 5, 1986. The petitioner's motion for reconsideration was likewise denied in an order dated March 14, 1986. Petitioner Esteban filed a notice of appeal stating that he was appealing the March 5, 1986 and the March 14, 1986 orders to the Supreme Court on pure questions of law.

Republic Act No. 5440, enacted September 9, 1968, provides that the mode of seeking Supreme Court review of a

lower court's final judgment or decree shall be by petition for review on certiorari. Since Dr. Esteban erroneously filed a notice of appeal instead of a petition for review and failed to timely pay the docket and legal research fund fees, the questioned orders of the lower court have now become final and executory. On this score alone, this petition or "appeal" may be dismissed outright. The respondent Judge and his Clerk of Court compounded the error when the Judge ordered the elevation of the records to this Court on the basis of the notice of appeal and the Clerk automatically complied without calling the attention of the Judge to the obvious error.

At any rate, even if we treat this "appeal" as a motion for clarification of our November 13, 1985 decision, which we do, it will have to be denied for lack of merit.

In his motion for reconsideration of the trial court's March 5, 1986 order, Dr. Esteban asserts that it is essential that he be reinstated "not only to correct the wrong done him but, more importantly, to remove the stigma of his illegal and unfair dismissal", citing a recent decision of this Court in G. R. No. L-49071 entitled, *The Insular Life Assurance Co., LTD. et al. v. National Labor Relations Commission, et al.*, (135 SCRA 697).

Section 1, Rule 39 of the Revised Rules of Court provides:

"Execution upon final judgment or orders. - Execution shall issue only upon a judgment or order that finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been duly perfected."

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Execution is a remedy afforded by law for the enforcement of a judgment. It is a judicial writ issued to an officer authorizing and requiring him to execute the judgment of the court (Francisco, *The Revised Rules of Court of the Philippines 1966 Edition*, Volume II, pp. 592-593). Once judgment becomes final, it is basic that the prevailing party is entitled as a matter of right to a writ of execution the issuance of which is the trial court's ministerial duty (*Balintawak Construction Supply Corp. v. Valenzuela*, 124 SCRA 331; *Santos v. Sibug*, 104 SCRA 520; *Carreon v. Buissan*, 70 SCRA 57; *Far Eastern Surety and Insurance Co. Inc. v. Vda. de Hernandez*, 67 SCRA 256; *Magdangal v. Hawaiian-Philippine Co.*, 65 SCRA 101; and *Bayer Philippines v. Agana*, 63 SCRA 355). The writ is compellable by mandamus (*Balintawak Construction Supply Corp. v. Valenzuela*, supra).

Execution must, however, conform substantially to every essential particular of the judgment issued. An execution which is not warranted by the judgment and exceeds it has no validity. It may not vary the terms of the judgment it seeks to enforce. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has pro tanto no validity (*Collector of Internal Revenue v. Gutierrez, et al.*, 108 Phil. 215; *Windsor Steel Manufacturing Co., Inc. v. Court of Appeals*, 102 SCRA 275; *Philippine American Accident Insurance Co., Inc. v. Flores*, 97 SCRA 811; *Araneta v. Perez*, 97 SCRA 584; *Philippine Virginia Tobacco Administration v. Gonzales*, 92 SCRA 172; and *Gamboa's Inc. v. Court of Appeals*, 72 SCRA 131).

In this case where the decision sought to be enforced specifically provides for Dr. Esteban's reinstatement on the condition that "he has not yet reached the age of compulsory retirement" a writ of execution compelling respondent Pamantasan to reinstate petitioner in spite of his having reached the age of retirement would not be in consonance with the expressed terms of the decision and a writ of execution issued therefor would amount to a nullity, an act in excess of the trial court's jurisdiction.

It is in the faithful performance of the obligations of its office under the law and obedience to the pronouncements of this Court that the trial court denied Dr. Esteban's motion for an alias writ of execution. That of necessity must be so and cannot be otherwise. We must commend rather than fault the trial court for its fealty to duty.

Certainly, it was with full sympathy that the trial court considered Dr. Esteban's concern that he be "physically" reinstated. Yet the court's power cannot be enlarged by its emotions (McKenna, *Herrera v. United States*, 22 US 558, 572). As we have pointed out in the case cited by the petitioner, *Insular Life Assurance Co. Ltd., et al. v. National Labor Relations Commission*, *supra*, "reinstatement x x x would (as in this case) merely be symbolic." There is no necessity for symbolism in this case. Our pronouncements have fully vindicated Dr. Esteban from the stigma of dishonor-able dismissal. We have upheld his rights and we guarantee the same. We need not punctuate the Pamantasan's errors further. It is with humility that Dr. Esteban should dignify himself in victory.

WHEREFORE, IN VIEW OF THE FOREGOING, the COURT RESOLVED to DISMISS the case now before us. Judge Rafael M. Declaro and Clerk of Court Cesar P. Javier are cautioned to abide by the procedure in Republic Act No. 5440 in future cases of this nature.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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